

SENATE BILL NO. 462

INTRODUCED BY D. STEINBEISSER

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SEPARATE LIEN ON OIL OR GAS OR THE PROCEEDS OF OIL OR GAS FOR INTEREST OWNERS; CLARIFYING RIGHTS OF PURCHASERS; PROVIDING A PROCESS FOR CLAIMING A SECURITY INTEREST AND LIEN; PROVIDING A PERSONAL RIGHT OF ACTION; PROVIDING FOR PRIORITY OVER CERTAIN CONSTRUCTION LIENS; AND AMENDING SECTIONS 71-3-124, 71-3-1002, AND 71-3-1011, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Oil and Gas Owners' Lien Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "First purchaser" means the first person who under contract ~~takes, receives, or~~ purchases oil or gas from an interest owner at or after the time the oil or gas is severed.

(2) "Interest owner" means a person:

(a) who owns an entire or a fractional interest of any kind or nature in the oil or gas at the time it is severed; or

(b) who has a right, either express or implied, to receive a monetary payment determined by the value of the severed oil or gas.

(3) "Leasehold" means a tenant's leasehold interest, as defined in 30-2A-103, in property on which the oil or gas well is located.

(4) "Operator" means any person engaged in the severance of oil or gas on the operator's own behalf, on behalf of the operator and other persons, or on behalf of other persons.

(5) "Person" means any individual, executor, administrator, agent, trustee, or receiver or an estate, institution, business trust, trust of any other kind, firm, corporation, partnership, cooperative, limited liability company, limited liability partnership, sole proprietorship, government agency, association, or any other group

1 acting as a unit.

2 (6) "Purchaser" means a person who under contract ~~takes, receives, or~~ purchases oil or gas from a first
3 purchaser.

4 (7) "Severed" or "severance" means the taking, extraction, or production from the leasehold of oil or gas
5 in any manner.

6
7 **NEW SECTION. Section 3. Extent of lien -- dispute resolution -- notice -- buyer in ordinary course**
8 **of business.** (1) To secure payment from the sale of oil or gas, an interest owner, subject to [section 6(2)] and
9 subsection (4) of this section, has a continuing security interest in and the right to a lien upon the severed oil or
10 gas or the proceeds from the sale of severed oil or gas to the extent of the interest owner's interest until the
11 purchase price has been paid to the interest owner.

12 (2) If there is a bona fide dispute about the amount due to the interest owner, the security interest and
13 lien do not accrue if the person holding the proceeds upon which the interest owner's security interest and lien
14 are based makes a good faith determination of the amount of payment due to the interest owner and pays the
15 interest owner that amount.

16 (3) (a) To have effect, a security interest or lien claimed under [sections 1 through 7] must be perfected
17 as provided in [section 5], and a copy of the notice of the lien, as provided in [section 5], must be provided by an
18 interest owner claiming the security interest or lien to other interest owners, if any, and to the operator, first
19 purchaser, or purchaser by registered or certified mail.

20 (b) A security interest or lien is not valid under [sections 1 through 7] unless the provisions in subsection
21 (3)(a) have been met.

22 (4) (a) A buyer in the ordinary course of business, as described in Title 30, chapter 9A, and subsection
23 (4)(b) of this section, is entitled to the severed oil or gas free of the security interest and a lien filed by the interest
24 owner under [sections 1 through 7].

25 (b) A buyer in the ordinary course of business is:

26 (i) a first purchaser or purchaser who has paid the purchase price for severed oil or gas to the interest
27 owner; or

28 (ii) a person who pays the purchase price for severed oil or gas to a person authorized to receive
29 payment on behalf of an interest owner.

30 (c) The property of the first purchaser or purchaser described under subsection (4)(b)(ii) also is free from

and not subject to a security interest or lien granted to an interest owner under [sections 1 through 7].

NEW SECTION. Section 4. Validity of lien -- transferability. (1) The security interest and lien granted to an interest owner under [sections 1 through 7] are not dependent on the interest owner's or operator's possession of the severed oil or gas.

(2) A change or transfer of the actual or constructive possession of or title to the severed oil or gas from an interest owner or an operator to a first purchaser or purchaser does not void or impair the security interest or lien.

NEW SECTION. Section 5. Perfection of lien -- verified notice -- effect of instruments -- effective date. (1) An interest owner who does not receive proceeds or payment for severed oil or gas when the proceeds are due may perfect the security interest and lien claimed under [section 3] by filing a notice, as provided in subsection (2), in the office of the county clerk and recorder in which the leasehold is located.

(2) A sworn affidavit must be in substantially the following form:

NOTICE OF OIL AND GAS OWNER'S LIEN

Notice is hereby given that: [name of interest owner for whom notice is filed], whose address is [address of named interest owner] claims [a fractional or decimal] interest in the oil or gas severed or proceeds of the sale from the [name of the leasehold], operated by [name and address of the operator]. The leasehold is located on the following [described land] in [name of county], Montana.

Oil or gas severed from the leasehold has been and is now or may be taken and the above-named interest owner has a security interest in and lien upon the oil or gas and the oil or gas proceeds to secure payment under the provisions of the Montana Oil and Gas Owners' Lien Act.

The signatories of this notice recognize that, if a sworn affidavit is not filed within 90 days of the time in which the payment to [the interest owner] is due, the security interest is not perfected and [the interest owner] does not receive a priority over any perfected security interest in the oil or gas described in this notice or the proceeds of the oil or gas described in this notice.

Dated:.....

Signed by [interest owner].....

(3) An instrument filed with the county clerk and recorder that accompanies the notice filed in subsection (1) is effective as a financing statement recognized under Title 30, chapter 9A, with or without the signature of

the debtor. An instrument described in this subsection may be terminated in the same manner as a financing statement under the provisions of Title 30, chapter 9A.

(4) (a) Upon filing of the notice, as provided in this section, the effective date of the interest owner's security interest and lien is the date on which the oil or gas severance occurred.

(b) Except as provided in [section 6(2)] and subsection (4)(c) of this section, a security interest and lien filed under this section have priority over the rights of any person whose rights or claims arise or attach to the severed oil or gas for which the purchase price has not been paid or to the proceeds of oil or gas if the oil or gas has been sold, including the severed oil or gas or the oil or gas proceeds that arise or attach between the time the security interest and lien attach and the time of filing.

(c) The security interest and the lien filed under this section do not have a priority over the security interest or lien previously created and perfected under Title 71, chapter 3, part 10, or an operating agreement or other voluntary agreement for the development and operation of the leasehold.

NEW SECTION. Section 6. Rights of first purchasers. (1) The following are not affected by the provisions of [sections 1 through 7] or the filing of any instrument permitted under [sections 1 through 7]:

(a) transfer of the legal title to oil or gas from an interest owner or operator to a first purchaser;

(b) ownership of oil or gas before the oil or gas is severed, as reflected by records affecting real property;

or

(c) the right of a first purchaser to take or receive oil or gas under the terms of a division order or a similar agreement for the sale and purchase of oil or gas.

(2) A first purchaser or purchaser is free to transport oil or gas products out of the state or to sell oil or gas products without permission or release of a lien perfected under [section 5].

NEW SECTION. Section 7. Expiration of lien -- enforcement -- consolidation -- costs -- personal actions -- other rights and remedies. (1) A security interest and lien claimed by an interest owner under [section 3] and perfected under [section 5] are attached to oil or gas that has not been paid for or to the proceeds of oil or gas if the oil or gas has been sold. The security interest and lien expire 1 year after the date of the filing of the notice of the lien under [section 5] unless within that year the interest owner files a personal right of action, as provided in subsection (2), in a court of competent jurisdiction in the county in which the leasehold is located. The interest owner may request an extension of the security interest and lien as part of the personal right of action

1 filing.

2 (2) Any number of persons claiming security interests and liens with respect to the oil or gas from the
3 same leasehold may join a personal right of action. The court may consolidate any separate personal rights of
4 action.

5 (3) The court may allow to the prevailing party costs as provided in 71-3-124 and any money paid for
6 copying or obtaining records filed under [sections 1 through 7].

7 (4) If the personal right of action is commenced after the filing of an instrument, as provided in [section
8 5], the instrument must be considered as a lien upon the severed oil or gas or on the proceeds from the sale of
9 the severed oil or gas, if sold, to the extent of the interest owner's claim for payment of the amount due the
10 interest owner or the amount of the security interest and lien recorded under [section 5] by the interest owner.
11 The security interest and lien may be further enforced as provided in 71-3-124.

12 (5) The provisions of [sections 1 through 7] do not impair or affect the right of a person to whom a debt
13 may be due to maintain a personal right of action to recover the debt against a person who is liable for the debt.

14 (6) The provisions of [sections 1 through 7] are cumulative to the provisions of Title 30, chapter 9A, and
15 not a limitation on or a substitution or impairment of any rights or remedies provided to a creditor against a debtor
16 under Title 30, chapter 9A.

17
18 **Section 8.** Section 71-3-124, MCA, is amended to read:

19 **"71-3-124. Filing costs and attorney fees to be recovered on foreclosure of liens -- offer of**
20 **judgment.** (1) In an action to foreclose any of the liens provided for by ~~part in Title 71, chapter 3, part~~ 3, 4, 5, 6,
21 8, or 10 ~~of this chapter or [sections 1 through 7]~~, the court shall allow as costs the money paid and attorney fees
22 incurred for filing and recording the lien and reasonable attorney fees in the district and supreme courts. The
23 costs and attorney fees must be allowed to each claimant whose lien is established, and the reasonable attorney
24 fees must be allowed to the defendant against whose property a lien is claimed if the lien is not established.

25 (2) In an action to foreclose any of the liens provided for by ~~part in Title 71, chapter 3, part~~ 3, 4, 5, 6, 8,
26 or 10 ~~of this chapter or [sections 1 through 7]~~, a defendant may make an offer of judgment as authorized in Rule
27 68, M.R.Civ.P. If the lienholder rejects the offer to allow judgment to be taken against the defendant and the
28 lienholder obtains a judgment that is not more favorable than the offer, the lienholder shall, in addition to the costs
29 allowed under Rule 68, M.R.Civ.P., pay the attorney fees incurred after the offer is made."
30

Section 9. Section 71-3-1002, MCA, is amended to read:

"71-3-1002. Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines -- exceptions. (1) Any person, corporation, or partnership ~~which shall that~~ under contract, expressed or implied, ~~contract~~ with the owner of any leasehold for oil and gas purposes or the owner of any gas pipe or oil pipeline or with the trustee or agent of ~~such the~~ owner, ~~perform~~ performs labor or ~~furnish~~ furnishes material or services used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well or oil or gas pipeline or who ~~shall furnish~~ furnishes any material or services or ~~perform~~ performs any labor in constructing or putting together any of the machinery used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well or oil or gas pipeline, whether or not ~~such the~~ material is incorporated ~~therein into~~ or becomes a part ~~thereof, shall of the oil or gas well or oil or gas pipeline, may~~ have a lien for the amount due ~~therefor~~, including associated transportation and mileage charges ~~connected therewith~~ and interest from the date the ~~same amount~~ was due, upon:

(a) the whole of ~~such the~~ leasehold or oil or gas pipeline;

(b) the appurtenances ~~thereon, and upon~~ on the leasehold or oil or gas pipeline;

(c) all material owned by the owner of ~~such the~~ leasehold or oil or gas pipeline and used in the digging, drilling, torpedoing, completing, operating, or repairing of ~~any such the~~ oil or gas well or oil or gas pipeline ~~and upon;~~

(d) all oil or gas wells located on ~~such the~~ leasehold ~~and upon;~~ and

(e) all oil or gas produced from ~~such the~~ leasehold ~~and the proceeds thereof inuring to the working interest therein as such working interest existed on the date the labor was first performed or materials or services were first furnished, subject to the provisions of [sections 1 through 7].~~

(2) ~~However, in the event~~ If labor is performed for, or materials or services are furnished to, the owner of the working interest in only a portion of the acreage covered by a lease, the lien granted ~~herein shall under subsection (1) must~~ be restricted to ~~such the~~ portion of the acreage that is covered by the lease.

(3) ~~The A~~ A lien ~~herein~~ granted ~~shall under subsection (1) does~~ not extend to any royalty interests, overriding royalty interests, or oil payments created prior to the date the first item of material or services are furnished or the date the first labor is performed."

Section 10. Section 71-3-1011, MCA, is amended to read:

"71-3-1011. Notice to purchaser of oil and gas. (1) ~~Anything in this part to the contrary~~

1 ~~notwithstanding, any~~ Any lien claimed by virtue of ~~under~~ this part ~~insofar as it may extend that extends~~ to oil or
2 gas or the proceeds of the sale of oil or gas ~~shall not be effective against any purchaser of such oil or gas is~~
3 subject to the provisions of [sections 1 through 7] and must meet the requirements of subsection (2) of this
4 section before taking effect. until written

5 (2) (a) Written notice of ~~such a~~ claim ~~has been~~ must be delivered to ~~such a~~ purchaser at ~~his the~~
6 purchaser's residence or principal place of business. ~~Such A~~ notice ~~shall must~~ state the name of the claimant,
7 ~~his the~~ claimant's address, the amount for which the lien is claimed, and a description of the interest upon which
8 the lien is claimed. ~~Such The~~ notice ~~shall must~~ be delivered personally to the purchaser or by registered or
9 certified letter deposited in the United States mail.

10 (b) Until ~~such the~~ notice is delivered as ~~above~~ provided in subsection (2)(a), ~~no such a~~ purchaser ~~shall~~
11 ~~be is not~~ liable to the claimant for any oil or gas produced ~~from the interest~~ upon which the lien is claimed or
12 ~~money from the sale of~~ proceeds thereof, ~~except to the extent of such part of the purchase price of such oil or~~
13 ~~gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice of~~
14 the oil or gas upon which the lien is claimed. ~~Such A~~ purchaser shall withhold payments for ~~such~~ oil or gas runs
15 to the extent of the lien amount being claimed until delivery of notice in writing that the claim has been paid."

16
17 NEW SECTION. Section 11. Notification to tribal governments. The secretary of state shall send
18 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
19 Chippewa tribe.

20
21 NEW SECTION. Section 12. Codification instruction. [Sections 1 through 7] are intended to be
22 codified as an integral part of Title 71, chapter 3, and the provisions of Title 71, chapter 3, apply to [sections 1
23 through 7].

24
25 NEW SECTION. Section 13. Saving clause. [This act] does not affect rights and duties that matured,
26 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

27 - END -